

Williams, Nancy [DAS]

From: Williams, Nancy [DAS]
Sent: Tuesday, November 14, 2006 3:28 PM
To: DAS GSE Customer Council Members
Cc: Lantz, Patricia [DAS]
Subject: GSE Customer Council - Waiver Information

Attachments: fy07rates.pdf; Mollie's Memo re Waiver 11-9-06.txt.pdf

Attached please find the petition for waiver of the administrative rules which govern the September 1 rate setting deadline, and the rule granting the waiver.

As you will recall, the Council voted to approve lower rates for the balance of FY07.

If you have any questions, please contact Charlie Smithson, Chairman.



fy07rates.pdf (172 KB)



Mollie's Memo re Waiver 11-9-0...

*Nancy Williams
Dept. of Administrative Services - General Services Enterprise
Hoover Bldg. - "A" Level
PH: 515-281-7259 FAX: 515-242-5974*

Nancy.Williams@iowa.gov



Iowa Department of
Administrative Services

Director's Office

Thomas J. Vilsack, Governor
Sally J. Pederson, Lt. Governor

Mollie K. Anderson, Director

To: General Services Customer Council

From: Mollie K. Anderson, Director

Date: November 9, 2006

RE: Ruling on Petition for Waiver of Administrative Rule

GSECC Nov06

The Department of Administrative Services (DAS) is governed by Iowa Code chapter 8A, and section 11 of the Iowa Administrative Code. Four customer councils have been formed to determine rates for utility services supplied by DAS. The administrative rules found at 11 IAC 10 set the framework for the rate-setting process.

On November 6, 2006, the General Services Customer Council ("Council") filed a petition for waiver of the second sentence in 11 Iowa Administrative Code 10.7(3), which states the following information: "[r]ates shall be established no later than September 1 of the year preceding the rate change."

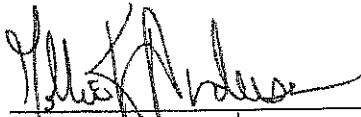
The Council requests waiver of the September 1 date so that final fiscal year 2007 utility rates for purchasing, capitol complex maintenance at the labs facility in Ankeny, fleet management and mail services can be reduced from November 2006 through June 2007, as voted on by the Council at the October 20, 2006 meeting.

The Council proffers in the petition, and the undersigned agrees that pursuant to 11 IAC 9.4(3), the waiver should be granted based on the following statements:

1. The application of the rule would pose an undue hardship on the entities which pay for the utility services provided by DAS as identified above, as the Council has voted to lower the rates paid by customers;
2. The waiver of the rule does not prejudice the substantial rights of any person;
3. It has not been determined, nor does the undersigned believe that the provision of the rule subject to the petition for waiver is specifically mandated by statute or any provision of law; and,
4. Substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver is requested, considering the scope and nature of the services provided.

Furthermore, in determining whether the petitions for waiver should be granted, the undersigned has considered the public interests, policies and legislative intent of the statute on which the rule is based. The undersigned has also considered the special circumstances of the Council with the overall goal of uniform treatment of all affected persons, and finds no disparate or unfair treatment.

The petition for waiver filed November 6, 2006 is hereby granted.



Mollie K. Anderson

Director, Department of Administrative Services

11-9-06

Date

DEPARTMENT OF ADMINISTRATIVE SERVICES

PETITION BY:)	
W. Charles Smithson, Chair)	
General Services Customer Council,)	PETITION for PARTIAL
For and on behalf of the Council,)	WAIVER of a SUBRULE for
FOR THE PARTIAL WAIVER OF)	APPLICABLE FY07 RATES
SUBRULE 11—10.7(3) "Rate Setting.")	

COMES NOW, on November 6, 2006, W. Charles Smithson (Petitioner), Chair of the General Services Enterprise Customer Council (Council), and for and on behalf of the Council files this Petition for Partial Waiver of a Subrule for Applicable FY07 Rates as follows:

1. Petitioner files this petition pursuant to rule 11—9.5 for the purpose of requesting the Department of Administrative Services (DAS) to grant a partial waiver of subrule 11—10.7(3) "Rate setting." That subrule states the following:

"The customer council shall approve the procedure for setting rates for the services that the customer council oversees and the resulting rates. Rates shall be established no later than September 1 of the year preceding the rate change."

2. This petition seeks a waiver of the second sentence of the subrule: "Rates shall be established no later than September 1 of the year preceding the rate change." This petition does not speak to the other sentence in the subrule.

3. The specific scope of the waiver sought is for DAS to waive the September 1 deadline and permit the Council to review the FY07 rates that were previously adopted and announced. The specific rates in question were presented to the Council by DAS GSE at the October 20, 2006 Council meeting.¹

¹ For purposes of this petition please incorporate by reference the pertinent documents distributed by DAS GSE at the October 20, 2006 meeting. Said documents list the specific rates at issue herein.

4. The duration of this waiver would be for the remainder of FY07 or until such time as DAS GSE and the Council discuss additional amendments to the FY07 rates.²

5. The following facts are based on clear and convincing evidence and are offered in support of this petition pursuant to rule 11—9.4:

a. The application of the subrule would post an undue hardship on DAS customers and the Council if FY07 Rates did not accurately reflect actual DAS budgetary expenses. DAS would also be harmed if it was determined that it was billing more than what was necessary to manage the department or was otherwise incorrectly assessing budgetary expenses.

b. Petitioner is unaware of any person who might have a legal right be substantially harmed if the waiver is granted.

c. Petitioner is unaware of the provisions of the subrule in question being based on any specific statutory mandate or other provision of law.

d. The equal protection of public health, safety, and welfare does not seem to be at issue with this petition or the underlying subrule.

e. The public interest, policies, and legislative intent support waiver of the rule.

6. The history of the Petitioner, the Council, and DAS concerning the setting of rates has existed for over three years.

7. Previous waivers of this subrule have been granted.

8. Petitioner does not believe that any other public agency or political subdivision regulates the activity in question. Concerning the name, address, and telephone number of any public agency affected by the granting of this petition, the Petitioner offers the name, address,

² Petitioner is assuming that the customary 30-day comment period (which is not mandated or supported by statute or rule) does not apply to this situation.

and telephone number, as published in electronic format, of the executive or administrative head of every agency of state government that pays the applicable utility rates.

9. Concerning the name, address, and telephone number of any person who would be adversely affected by the granting of this petition, Petitioner believes that no such person would be adversely affected by the granting of this petition and thus offers no additional information.

10. The name, address, and telephone number of any person with knowledge of the relevant facts relating to the proposed waiver the Petitioner offers the name, address, and telephone number of each member of the Council, each official and employee of DAS who attends or otherwise has knowledge of the workings of the Council, and each director or administrative head of agencies that pay the applicable utility rates. Said information is widely available in electronic format.

11. By signing this document the Petitioner attests that the facts set out in this petition are accurate to the best of his knowledge and belief. In addition, the undersigned believes this petition contains a statement of reasons that justify the waiver being granted. Finally, by directing the filing of this petition, the Council and the Petitioner hereby give authorization to release information to DAS relevant to the waiver.

WHEREFORE, the Petitioner requests that the Department of Administrative Services grants a partial waiver of subrule 11—10.7(3) for the reasons set out in this petition.

Respectfully submitted,



W. Charles Smithson, Chair
General Services Customer Council
510 E. 12th Street, Suite 1A
Des Moines, Iowa 50319
(515) 281-3489
(515) 281-3701 (fax)
Charlie.Smithson@iowa.gov

CERTIFICATE OF SERVICE

The undersigned does hereby certify that this Petition for Partial Waiver of a Subrule for Applicable FY07 Rates was sent by email on November 6, 2006, to:

Patricia Lantz
DAS Counsel


W. Charles Smithson